

105TH CONGRESS }
2d Session }

SENATE

{ REPORT
105-299

MANDATES INFORMATION ACT OF 1998

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TOGETHER WITH

MINORITY VIEWS

TO ACCOMPANY

S. 389

TO IMPROVE CONGRESSIONAL DELIBERATION ON PROPOSED FEDERAL PRIVATE SECTOR MANDATES, AND FOR OTHER PURPOSES



SEPTEMBER 2 (legislative day, AUGUST 31), 1998.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

59-010

WASHINGTON : 1998

COMMITTEE ON GOVERNMENTAL AFFAIRS

FRED THOMPSON, Tennessee, *Chairman*

WILLIAM V. ROTH, JR., Delaware

TED STEVENS, Alaska

SUSAN M. COLLINS, Maine

SAM BROWNBACK, Kansas

PETE V. DOMENICI, New Mexico

THAD COCHRAN, Mississippi

DON NICKLES, Oklahoma

ARLEN SPECTER, Pennsylvania

JOHN GLENN, Ohio

CARL LEVIN, Michigan

JOSEPH I. LIEBERMAN, Connecticut

DANIEL K. AKAKA, Hawaii

RICHARD J. DURBIN, Illinois

ROBERT G. TORRICELLI, New Jersey

MAX CLELAND, Georgia

HANNAH S. SISTARE, *Staff Director and Counsel*

KRISTINE I. SIMMONS, *Professional Staff Member*

LEONARD WEISS, *Minority Staff Director*

SEBASTIAN O'KELLY, *Minority Professional Staff Member*

LYNN L. BAKER, *Chief Clerk*

CONTENTS

	Page
I. Summary and Purpose	1
II. Background	2
III. Legislative History	4
IV. Section-by-Section Analysis	8
V. Estimated Cost of Legislation	10
VI. Evaluation of Regulatory Impact	11
VII. Minority Views of Senator Glenn	12
VIII. Minority Views of Senator Levin	16
IX. Minority Views of Senators Durbin and Akaka	18
X. Changes in Existing Law	21

105TH CONGRESS }
2d Session }

SENATE

{ REPORT
105-299

THE MANDATES INFORMATION ACT OF 1998

SEPTEMBER 2 (legislative day, AUGUST 31), 1998.—Ordered to be printed

Mr. THOMPSON, from the Committee on Governmental Affairs,
submitted the following

REPORT

[To accompany S. 389]

The Committee on Governmental Affairs, to which was referred the bill (S. 389) to improve congressional deliberation on proposed Federal private sector mandates, and for other purposes, having considered the same, report favorably on the bill and recommend that the bill do pass.

I. SUMMARY AND PURPOSE

The purposes of S. 389, the Mandates Information Act, are (1) to improve the quality of Congress' deliberation with respect to proposed mandates on the private sector by providing Congress with more complete information about the effects of such mandates and ensuring that Congress acts on such mandates only after focused deliberation on their effects, and (2) to provide Congress better information on the impact of private sector mandates on consumers, workers and small businesses.

S. 389 amends the Unfunded Mandates Reform Act of 1995 (UMRA) (P.L. 104-4) by extending UMRA's key protections for State and local governments to the private sector. Under both UMRA and S. 389, "private sector" is defined as "all persons or entities in the United States," including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but not State, local or tribal governments.

Specifically, the bill—

(1) requires that a Congressional Budget Office cost estimate for a bill prepared pursuant to the Unfunded Mandates Reform Act include an estimate of the indirect impact of any private sector mandates in the bill on consumers, workers and small businesses (including the effect on prices, wages, profitability, etc.); and

(2) applies a point of order against any bill that includes a mandate estimated to directly cost the private sector \$100 million or more in a fiscal year.

Currently, the Unfunded Mandates Reform Act requires CBO cost estimates for private sector mandates exceeding \$100 million in direct cost and allows a point of order against a bill containing private sector mandates only if the committee has failed to publish that CBO cost estimate prior to the bill's consideration on the floor. S. 389 would expand UMRA's CBO cost estimate requirement to include the indirect impact of a mandate on "consumers, workers and small businesses." This indirect impact would not, however, trigger a new point of order. Estimates of indirect impacts would be supplied solely for informational purposes.

S. 389 would also extend UMRA's points of order against mandates on State and local governments to mandates on the private sector. The separate dollar thresholds for intergovernmental mandates (\$50 million) and private sector mandates (\$100 million) would be retained.

If a point of order is raised against a bill (under UMRA or S. 389) in the Senate, either a simple majority will vote to waive the point of order or the Chair will rule on the point of order. If the point of order is sustained, it is necessary to appeal the ruling of the Chair successfully (by simple majority vote) in order to proceed with consideration of the bill. In the House, the question of whether to sustain a point of order is not subject to a ruling by the Chair; rather, the question is put to the whole House for a vote after 20 minutes of debate.

II. BACKGROUND

On March 22, 1995, President Clinton signed into law the Unfunded Mandates Reform Act of 1995 (UMRA), which amended Title IV of the Congressional Budget and Impoundment Act of 1974. Title I of UMRA outlines specific reporting and estimating responsibilities for congressional committees and the Congressional Budget Office. It allows a point of order to be raised against the consideration of bills, joint resolutions, amendments, motions, and conference reports in the House and Senate if such legislation contains mandates estimated to cost States or localities \$50 million in any one year, or if a committee, when reporting a bill or joint resolution, fails to include in either the committee report or the Congressional Record a statement from the Congressional Budget Office estimating the direct costs of any mandates (intergovernmental or private sector) contained in the legislation.

In an assessment of the Unfunded Mandates Reform Act in 1997, the Congressional Budget Office gave its perspective on the effectiveness of the point of order in discouraging new intergovernmental mandates:

Although not conclusive, last year's experience suggests that UMRA was helpful in limiting the imposition of unfunded mandates on state and local governments. Besides floor actions to reduce the costs of such mandates, a number of changes were made in committee or before markups

to eliminate or minimize mandate costs after consultation with CBO.¹

While the point of order seems to be having the intended effect of discouraging new mandates on State and local governments, the absence of a point of order against private sector mandates is reflected in the number of bills proposed with private sector mandates. CBO notes, "The track record for private sector mandates is different from that of intergovernmental mandates. In 1997, CBO identified more than twice as many private sector mandates above the threshold as intergovernmental mandates."²

It should also be noted that congressional committees have not been vigilant in complying with UMRA's requirements to assess the costs and benefits of private sector mandates independently of the CBO estimate, and to report on the extent to which a mandate affects both the public and private sectors and how federal funding of the mandate's intergovernmental costs would affect the competitive balance between these two sectors. Of 24 committee submissions (including committee reports or parts of committee reports) from 1997 studied by the Congressional Research Service, only ten included substantive information on private sector mandates provided by the committee itself (in addition to whatever CBO material they published).³ This anemic compliance with UMRA's requirements supports the assertion that congressional consideration of private sector mandates and their costs needs to be enhanced.

To improve congressional deliberation of proposed private sector mandates, Senator Abraham introduced S. 389, the Mandates Information Act, on March 3, 1997. When introducing the bill, Senator Abraham stated:

These reforms are necessary in my view * * * because the 1995 Act, while effective in its chosen sphere of intergovernmental mandates, does not contain the necessary mechanisms to force Congress to think seriously about the wisdom of proposed mandates on the private sector. This leaves our private sector faced with the same dilemma once faced by our states and localities: Congress does not give full consideration to the costs its mandates impose. Focusing almost exclusively on the benefits of unfunded mandates, Congress pays little heed to, and sometimes seems unaware of, the burden that unfunded mandates impose on the very groups they are supposed to help.⁴

While the goals of most private sector mandates are laudable, too often Congress fails to consider the economic consequences, which may be passed on to consumers in the way of higher prices, and to workers through reduced wages and benefits. S. 389 is intended to ensure that Congress has adequate information about these im-

¹Congressional Budget Office. "An Assessment of the Unfunded Mandates Reform Act in 1997." February 1998. Page 6.

²*Id.*

³Congressional Research Service memorandum to the Senate Committee on Governmental Affairs, "Mandates on the Private Sector: Committee Response in 1997 to Statutory Requirements for Reports on Legislation", prepared by Richard S. Beth, Government Division. June 1, 1998. Page 5.

⁴Prepared floor statement of Senator Spencer Abraham (R-MI) on the introduction of "The Mandates Information Act of 1997", March 3, 1997.

pacts. S. 389 does not prevent Congress from passing bills that a majority of Members want to pass, but it would impose a hurdle for Congress to clear during deliberations on bills that contain private sector mandates and would increase the demand for additional cost information.

III. LEGISLATIVE HISTORY

The Committee held a hearing on S. 389 on June 3, 1998.⁵ Senator Brownback (chairing on behalf of Senator Thompson), Senator Durbin and Senator Cleland attended. Witnesses at the hearing were Senator Spencer Abraham (R-MI), the sponsor of S. 389; Representative Rob Portman (R-OH), the House sponsor of H.R. 3534, the House companion bill; James L. Blum, deputy director of the Congressional Budget Office; R. Bruce Josten, executive vice president of government affairs, U.S. Chamber of Commerce; Mary Ann Cricchio, owner of Da Mimmo Italian Restaurant in Baltimore, Maryland on behalf of the National Restaurant Association; and, Sharon Buccino, legislative counsel at the Natural Resources Defense Council.

Senator Abraham began his testimony by noting the broad support for this bill among his Senate colleagues and many interest groups representing millions of American small businesses, workers, and consumers. He noted that the costs of private sector mandates are passed on in the form of higher prices for consumers, lower wages and benefits for workers, and fewer employment opportunities for those in the market for a new job. "The Mandates Information Act would address this problem by making Members of Congress aware of the costs they are imposing on the American people," he stated.⁶

Senator Abraham noted that some questions had been raised as to whether indirect costs would be included in calculating the \$100 million cost threshold. He stated that it was not his intent to include indirect costs in the point of order, and that he would support a technical amendment to clarify this distinction.⁷

In discussing the impact of the point of order, Senator Abraham stated:

As to the point of order itself, a simple majority of members could waive it. Therefore, as a result, the point of order will not keep Congress from enacting needed legislation. But that point of order will force members to recognize the mandate's costs as well as its benefits before implementing it.⁸

S. 389 amends the Unfunded Mandates Reform Act (UMRA), which allows points of order to be raised against legislation that would cost state, local or tribal governments in excess of \$50 million in one year. Senator Abraham testified that UMRA has been "an unmitigated success," saving taxpayers dollars without creating

⁵The Senate Budget Committee held a hearing on S. 389 on February 12, 1998, and the Senate Small Business Committee held a hearing on S. 389 and other proposals on June 4, 1997.

⁶Oral testimony of Senator Spencer Abraham (R-MI) before the Senate Committee on Governmental Affairs. Hearing on S. 389, the Mandates Information Act, June 3, 1998. Committee hearing transcript, p. 6.

⁷*Id.*, p. 6-7.

⁸*Id.*, p. 7.

undue delays in House and Senate floor proceedings, and that S. 389 would build on UMRA's success.⁹

Representative Portman echoed many of Senator Abraham's points in favor of the Mandates Information Act, and noted that it had passed the House in May by a vote of 279-132. Rep. Portman pointed out that UMRA has given State and local governments leverage to get committees to deal with potential mandates before they come to the floor, while being flexible enough to permit Congress to pass legislation that imposes an unfunded mandate when the merits outweigh any negative effects.¹⁰ S. 389 would extend UMRA's coverage, and its benefits, to private sector mandates.

Senators Durbin and Cleland each expressed reservations about S. 389. Senator Durbin stated that it would be difficult for CBO to estimate the indirect impacts of private sector mandates, and indicated that while he did not object to raising all of the elements, including cost issues, as part of the debate, he questioned whether a point of order and separate vote on the impact was necessary. Senator Cleland echoed these sentiments and added that a point of order on private sector mandates "could bring Congress to a screeching halt." Rep. Portman responded that, based on Congress' experience with UMRA, the point of order has not stopped legislation but has resulted in more thoughtful consideration of bills at the committee level and better bills coming to the floor. Since January 1996, when UMRA took effect, the point of order has never been raised in the Senate. It has been raised five times in the House, but has never successfully stopped consideration of a bill.¹¹

Members were particularly interested in the testimony of the Congressional Budget Office and whether CBO would be able to comply with the requirements in S. 389. James Blum, deputy director of CBO, assured Committee members that CBO was well prepared for the responsibilities assigned to it by the Mandates Information Act. Mr. Blum began his testimony by acknowledging the effectiveness of UMRA. He stated:

Although not conclusive, the experience so far suggests that UMRA has been effective in helping to curb the practice of imposing unfunded mandates on State and local governments. There have been floor actions to reduce the costs of intergovernmental mandates and the changes have been made in Committee to eliminate or minimize the costs after consultation with CBO.¹²

Mr. Blum then laid to rest concerns that CBO would not be able to fulfill its new responsibilities under S. 389. UMRA already requires CBO to estimate the impact of newly proposed federal mandates, and when time and data permit, CBO also provides information about significant indirect or secondary effects in their mandate cost statements. Mr. Blum continued:

⁹*Id.*, p. 9.

¹⁰ Oral testimony of Representative Rob Portman (R-OH) before the Senate Committee on Governmental Affairs. Hearing on S. 389, the Mandates Information Act, June 3, 1998. Committee hearing transcript, p. 13.

¹¹*Id.*, p. 26.

¹² Oral testimony of James Blum before the Senate Committee on Governmental Affairs. Hearing on S. 389, the Mandates Information Act, June 3, 1998. Committee hearing transcript, p. 36.

Thus, for that reason, we do not believe that we would have a problem with fulfilling the informational requirements of S. 389 or H.R. 3534. Both bills would require our analysts to spend some more time in determining whether the private sector mandates exceed the \$100 million threshold and in analyzing any possible effects on consumers, workers and small businesses. Nevertheless, we do not anticipate that these increased efforts would necessarily require additional resources or further diversion of resources from our budget work. * * *¹³

He added that the new information requirements apply only to bills with private sector mandates exceeding the \$100 million direct cost threshold, and only 20 to 30 such bills are reported each year. Further, the new information requirements give CBO sufficient flexibility to provide the information within the time that is available, although at times the information will be qualitative in nature rather than a specific dollar amount.

Senator Brownback asked Mr. Blum whether he thought UMRA had been more effective in helping to curb the practice of imposing unfunded mandates on State and local governments, but less effective in discouraging new private sector mandates, because there is a point of order against mandates on States and localities but not on private sector mandates. Mr. Blum responded:

I think it is * * * the absence of that point of order that makes that the case * * * When we are working with committees (on) legislation that has mandates involved, particularly on the private sector side * * * when we just point out that, in fact, there is no point of order that would lie, then they lose interest and they do not care * * *

Now, with a point of order applying, then I think, in fact, they would care and we would have more extensive discussions, and I think our experience would indicate that in some instances * * * they would go out of their way to avoid the possibility of a point of order being raised by minimizing the costs to get below the threshold or perhaps even eliminating the mandate.¹⁴

Senator Durbin questioned Mr. Blum on the propriety of obtaining information from industry to assist CBO in estimating the impact of private sector mandates on that industry. Mr. Blum replied that in addition to information obtained from industry, CBO would turn to other sources of information to verify its accuracy.

The Committee also heard testimony from R. Bruce Josten, Executive Vice President of government affairs for the U.S. Chamber of Commerce, and Mary Ann Cricchio, owner of Da Mimmo Italian Restaurant in Baltimore, Maryland on behalf of the National Restaurant Association, in support of S. 389. Sharon Buccino, legislative counsel at the Natural Resources Defense Counsel, testified in opposition to the bill.

¹³*Id.*, p. 37.

¹⁴Oral testimony of James Blum before the Senate Committee on Governmental Affairs. Hearing on S. 389, the Mandates Information Act, June 3, 1998. Committee hearing transcript, p. 39-40.

Mr. Josten testified that the U.S. Chamber of Commerce, and a host of business groups, endorsed S. 389 because it would “help Congress identify and eliminate unnecessary proposed costs and red tape on small businesses” and “facilitate better informed and effective public policy.”¹⁵ Ms. Cricchio shared her personal experience as a small business owner and explained why she felt the Mandates Information Act is needed:

I support positive * * * social policy that ensures a healthy, compassionate America and I want to do my part. It is in my heart as the mother of a 6-year-old son and as a resident along the Chesapeake Bay and in my best interests as a restaurant owner, whose livelihood depends on accommodating employees and customers. But Congress has to realize that small businesses shoulder a disproportionate share of costs for mandates. When Congress fails to take into account who ultimately pays for unfunded mandates and how these costs could be reduced, these laws end up hurting the people they were meant to help.¹⁶

By contrast, Ms. Buccino noted that the Natural Resources Defense Council was one of several environmental and labor groups opposing S. 389 over concerns that the bill would be an impediment to mandates that protect the environment and public health, and that the bill’s emphasis on costs over benefits is inappropriate.¹⁷

The Committee held a business meeting to consider S. 389 on June 17, 1998. Senator Thompson offered a set of perfecting amendments en bloc which addressed some of the concerns raised at the hearing. The Thompson amendments clarified that the requirement for CBO estimates of the indirect impact of mandates on consumers, workers and small businesses is not subject to the point of order, exempted funded private sector mandates from the point of order, and made various technical corrections. In addition, one of the Thompson amendments added a new section to S. 389 which clarified the Unfunded Mandates Reform Act and how Congress expects the Congressional Budget Office to interpret UMRA as it applies to large entitlement programs.¹⁸ These amendments passed en bloc by voice vote.

Senator Durbin offered an amendment to S. 389 to extend the point of order requirements to legislation that would “eliminate, prevent the imposition of, prohibit the use of appropriated funds to

¹⁵ Oral testimony of R. Bruce Josten before the Senate Committee on Governmental Affairs. Hearing on S. 389, the Mandates Information Act, June 3, 1998. Committee hearing transcript, p. 47.

¹⁶ Oral testimony of Mary Ann Cricchio before the Senate Committee on Governmental Affairs. Hearing on S. 389, the Mandates Information Act, June 3, 1998. Committee hearing transcript, p. 53.

¹⁷ Oral testimony of Sharon Buccino before the Senate Committee on Governmental Affairs. Hearing on S. 389, the Mandates Information Act, June 3, 1998. Committee hearing transcript, p. 58.

¹⁸ The language of this amendment was introduced as a freestanding bill (S. 2068) in the Senate by Senator Thompson, along with Senator Glenn, on May 12, 1998. The Committee heard testimony in support of this legislation on February 24, 1998 from Governor George Voinovich (R-OH), president of the National Governors’ Association, and Governor Ben Nelson (D-NE), vice president of the National Governors’ Association, during the Committee’s hearing on regulatory reform. The legislation is necessary because the Congressional Budget Office is misinterpreting the definition of “Federal intergovernmental mandate” as provided in the law, making Title I of the Unfunded Mandates Reform Act inoperative for two-thirds of all federal aid to all governments for all purposes.

implement, or make less stringent any Federal private sector mandate * * * that protects human health, safety or the environment.” Senator Durbin argued that if Congress is going to require a separate vote to impose a mandate, then Congress should require a separate vote to remove a safeguard when it has an impact on health, safety or the environment. Senator Collins stated that she was sensitive to Senator Durbin’s concern that S. 389 not be used to override environmental laws, but felt his amendment as drafted would allow a point of order to be raised against legislation even when the impact on the environment is insignificant because the point of order is not tied to any dollar threshold. Senator Thompson expressed similar reservations about Senator Durbin’s amendment, and added that he thought the point of order established under the amendment was unnecessary because the impact of legislation on the environment and human health and safety already receives adequate attention and debate, and a point of order would only serve to delay the consideration of legislation. The amendment was defeated by a vote of six yeas to eight nays.

The Committee deferred further action on S. 389 until its next business meeting on July 15, 1998 in order to afford more Senators an opportunity to be heard on the bill. At that meeting, Senator Levin voiced his concern that the bill emphasizes costs over benefits, and would allow a point of order to be raised even if CBO is unable to estimate the impact of a private sector mandate. Senator Stevens expressed reservations about the scope of the bill and its application to appropriations bills. Senator Nickles, Senator Domenici and Senator Thompson reiterated their support for the bill and its focus on providing Congress with more complete information about the effects of private sector mandates. After some discussion, S. 389 as amended by the Thompson amendments was ordered reported favorably by a vote of six yeas to four nays.

IV. SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

This Act may be cited as the “Mandates Information Act of 1998”.

SEC. 2. FINDINGS

Congress finds that Congress should consider the effects of proposed mandates on consumers, workers and small businesses, and that Congress has often acted on mandates while knowing their benefits but not their costs, which are borne by consumers, workers and small businesses.

SEC. 3. PURPOSES

The purposes of this Act are to improve the quality of Congress’ deliberation on proposed private sector mandates by providing Congress with more complete information and ensuring that Congress acts on such mandates only after focused deliberation on their effects, and to enhance the ability of Congress to distinguish between helpful and harmful private sector mandates.

SEC. 4. FEDERAL PRIVATE SECTOR MANDATES

(a) In General.—

(1) Estimates.—This paragraph amends Section 424(b) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 658c(b)) by adding at the end a new paragraph (4) which directs the Congressional Budget Office, if feasible, to estimate the impact of private sector mandates in a bill or joint resolution on consumers, workers, and small businesses, including the impact on—

consumer prices and the supply of goods and services;
worker wages, benefits, and employment opportunities; and
the hiring practices, expansion and profitability of businesses with 100 or fewer employees.

The estimate prepared under this paragraph shall not be considered in determining whether the direct costs of all Federal private sector mandates in the bill or joint resolution exceed the \$100 million threshold.

(2) Point of Order.—This paragraph amends Section 424(b)(3) of the Congressional Budget and Impoundment Control Act of 1974 to provide that if the Congressional Budget Office is unable to estimate the cost of private sector mandates in a bill or joint resolution, a point of order will lie against consideration of that bill or joint resolution as if the committee of jurisdiction had not published a CBO cost estimate.

(3) Threshold Amounts.—This paragraph amends Section 425(a)(2) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 658d(a)(2)) to exempt funded private sector mandates from a point of order.

(4) Application Relating to Appropriations Committees.—This paragraph amends Section 425(c)(1)(B) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 658d(c)(1)(B)) to extend the point of order to any legislative provision (if it includes a Federal private sector mandate) contained in an appropriations bill or conference report, or contained in an amendment to an appropriations bill or amendments in disagreement between the two Houses to an appropriations bill.

(5) Application Relating to Congressional Budget Office.—This paragraph amends Section 427 of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 658f) by requiring the Congressional Budget Office, when practicable, to estimate the direct costs of a Federal private sector mandate contained in an amendment at the request of any Senator.

(b) Exercise of Rulemaking Powers.—This paragraph states that this section is enacted as an exercise of the rulemaking power of the Senate and House of Representatives with recognition of the constitutional right of either House to change such rules at any time.

SEC. 5. FEDERAL INTERGOVERNMENTAL MANDATE.

This section makes a technical correction to Section 421(5)(B) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 658(5)(B)) to clarify that new or expanded flexibility for State or local governments to reduce their costs is required to offset

any new federally-imposed direct costs over \$50 million annually that States or localities will incur under large entitlement programs.

V. ESTIMATED COST OF LEGISLATION

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 20, 1998.

Hon. FRED THOMPSON,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 389, the Mandates Information Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mary Maginniss and Elliot Schwartz.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, *Director*).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 389—Mandates Information Act of 1998

The Congressional Budget Office (CBO) estimates that enacting this legislation would result in no significant costs to the federal government. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. S. 389 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would have no impact on the budgets of state, local, or tribal governments.

S. 389 would amend the Congressional Budget Act to change certain duties of CBO under UMRA. Specifically, the bill would require CBO to provide additional information when it determines that a bill contains a private-sector mandate with costs exceeding the threshold established in UMRA (\$100 million in 1996, adjusted for inflation). That information would include the impact of private-sector mandates on consumers, workers, and small businesses (including any disproportionate impact on particular regions or industries). Further, the bill would make legislation subject to a point of order if it included private-sector mandates with costs exceeding the threshold. Finally, S. 389 would amend UMRA to require that any new federal requirement or reduction in funding for certain large entitlement grant programs (such as Medicaid) would constitute an intergovernmental mandate unless the legislation that creates the mandate also provides new flexibility for state and local governments to offset these additional costs.

Based on the experiences of CBO and the Joint Committee on Taxation (which provides CBO with revenue estimates) in carrying out the provisions of UMRA, CBO estimates that neither agency would incur significant additional costs to implement the changes that would be made by S. 389. The number of bills containing pri-

vate-sector mandates with costs exceeding the threshold and those affecting large entitlement grant programs is small. The additional workload thus would not be substantial. (Any increase in costs would be subject to the availability of appropriated funds for CBO and the Joint Committee on Taxation.) In addition, CBO estimates that changes to Congressional procedures would not result in additional costs.

On May 7, 1998, CBO transmitted a cost estimate for H.R. 3534, the Mandates Information Act of 1998, as ordered reported by the House Committee on Rules on May 6, 1998. The bills are similar, and CBO's estimates are identical.

The CBO staff contacts are Mary Maginniss and Elliot Schwartz. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

VI. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirement of paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory and paperwork impact of S. 389. The legislation would allow a point of order to be raised against legislation containing a proposed Federal private sector mandate which would cost the private sector at least \$100 million in any one of the succeeding five years. It is intended to help Congress identify these mandates and work to make them less burdensome on the private sector, or to cause Congress to seek to achieve the same policy objectives without the use of private sector mandates. Further, S. 389 requires the Congressional Budget Office to estimate the indirect impact of private sector mandates wherever possible. CBO has testified that they can fulfill their new responsibilities within existing resources. This legislation would impose no additional regulatory burdens and will reduce future burdens on individuals, businesses, not-for-profit organizations and other non-governmental entities.

VII. MINORITY VIEWS OF SENATOR GLENN

I strongly oppose S. 389—"The Mandates Information Act."

This legislation would expand the underlying points of order in the Unfunded Mandates Reform Act (UMRA)—legislation that I was proud to be the lead Democratic sponsor of here in the Senate—to cover legislation containing private sector mandates in excess of \$100 million annually.

UMRA already requires that CBO conduct cost estimates of private sector mandates in excess of \$100 million. It is something that they have been doing since 1995 on legislation ranging from Welfare Reform, to the Farm Bill, to Immigration Reform (see attached tables from CBO's testimony before the Committee). However, under S. 389 a point of order would be established to require payment (absent a majority vote waiver) to the private sector for carrying out these mandates. That's a potential budget buster if you look at the cost of these bills. I don't think that's the proper approach.

Here is a sample listing and cost of recent legislation (as scored by CBO) that would be, or would have been, subject to the private sector points of order established under S. 389.

1. Telecommunications Reform—Greater than \$7 billion.
2. Airport and Airway Trust Fund—\$2.7 billion.
3. Nuclear Waste Policy—\$2.3 billion.
4. Welfare Reform—Up to \$800 million.
5. Budget Reconciliation: Federal Employee Retirement—\$200 million to \$600 million.

Let's look at the last example as it cuts close to home for the Governmental Affairs Committee. We are responsible for the law governing the Federal retirement and benefit system. From my long experience on the Committee, I am well aware that during the reconciliation process our Committee must inevitably make changes in law that affect and sometimes cost Federal employees and retirees (or at least some segment of the two). If S. 389 were to be enacted, then I would anticipate we would continually face points of order on Committee-reported reconciliation measures. It would only make more difficult a process that is already complicated. We already know what the costs are from existing law—S. 389 just creates an additional, unneeded procedural barrier.

This same barrier will inevitably be raised during consideration of tax measures, even those that might provide a net tax cut. These proposals almost always have some revenue increase (i.e. "mandate") in them somewhere on some private sector entity or entities. That's usually to offset the reduction in revenues elsewhere (for example: raising corporate tax rates to offset an increase in the standard deduction for individuals).

Proponents of S. 389 might argue that since under UMRA we are supposed to pay for mandates on State and local governments, we should do so also for the private sector. But I think that there is

an important distinction. State and local governments serve the same taxpaying, voting public that elect us here in the Congress, while the private sector is primarily accountable to its shareholders, not the general public. Costs imposed on the private sector fall on private owners; costs imposed on the public sector fall on taxpayers.

The Committee adopted the Chairman's amendment to correct a provision in the bill so that a point of order only lies against "unfunded" private sector mandates and does not cover "funded" private sector mandates. His amendment also includes the Thompson-Glenn technical correction regarding CBO's interpretation of UMRA's application to entitlement programs. The Chairman and I introduced this correction as separate legislation (S. 2068) earlier this year. It has strong support from the Governors and State legislators. So I supported the Chairman's amendment, although ultimately it does not fix the flaws in the underlying bill. My preference would be to separate S. 2068 from the bill and see if it can be passed as a free-standing measure this year.

My colleague from Illinois, Senator Durbin, offered an amendment in markup to subject legislation to a point of order that eases an existing private sector mandate that protects human health and the environment. His aim was try to make it more difficult for Congress to enact anti-environmental riders quietly slipped in as part of large catch-all appropriations, authorization or reconciliation bills. The Natural Resources Defense Council has noted that Congress has enacted 16 such riders in the last year alone, none of which went through the regular authorization process. My view is that if we are going to add private sector point of order protections in S. 389 to the public sector protections existing in UMRA, then out of fairness and equity we should consider similar protections for the environment and public health, especially since these riders have become such a problem in the last couple of years. So I was disappointed when the Durbin amendment was defeated on a party-line vote.

Current law already provides information on the cost of mandates on the private sector. That is sufficient to inform us during debate on legislation without creating a new point of order process as envisioned under S. 389. For that and the above reasons, I oppose this bill and I urge my colleagues to do the same.

JOHN GLENN.

TABLE 3.—REPORTED BILLS WITH PRIVATE-SECTOR MANDATES THAT EXCEED THE STATUTORY THRESHOLD

Topic	Mandate	Bill Number(s)	Estimated annual costs (billions of dollars)	Were indirect effects con- sidered
104TH CONGRESS, SECOND SESSION				
Amendments to Fair Labor Standards Act	Increase federal minimum wage	H.R. 940; H.R. 1227; H.R. 3265; H.R. 3448; S. 413	4.0	Yes.
Health Insurance Reform	Health insurance portability	H.R. 3070; H.R. 3103; H.R. 3160; S. 1028	0.3 to 0.5	Yes.
Health Insurance Reform	Mental health parity in insurance plans	H.R. 3103	9.0 to 15.0	Yes.
Health Insurance Reform	Minimum-length maternity stay	S. 969	0.2	Yes.
Immigration Reform	Requirements on immigrants' sponsors	H.R. 2202; S. 269	Up to 0.6	No.
Welfare Reform	Earned income credit provisions and requirements on immigrants' sponsors.	H.R. 3507; H.R. 3734; S. 1795.	Up to 0.8	No.
Small Business Jobs Protection	Miscellaneous tax provisions	H.R. 3448	0.3 to 1.0	No.
Telecommunications Reform	Interconnection, universal service, and blocking of certain programs	S. 652	Greater than 7.0 ¹	Yes.
Farm Bill	Fees and dairy requirements	H.R. 2854	Greater than 0.8	Yes.
Professional Sports Franchises	Requirements on owners and leagues	H.R. 2740	Greater than 0.1	No.
Nuclear Waste Policy	Fees and training requirements	H.R. 1936	Greater than 2.7	No.
Memorandum: Mandates with Uncertain Costs ²				
Intermodal Transportation	Certification of freight containers	H.R. 4040	n.a.	No.
Invasive Species	Requirements on vessels	H.R. 3217	n.a.	No.
105TH CONGRESS, FIRST SESSION				
Airport and Airway Trust Fund	Reinstated ticket tax	H.R. 668; S. 279	2.7	No.
Biomedical Research	Prohibit manufacture of certain drugs	Draft bill	0.1 to 0.3	Yes.
Budget Reconciliation: Medicare	Requirements on private health insurance providers	H.R. 2015; S. 947	0.1 to 1.8	No.
Budget Reconciliation: Federal Employee Retirement	Increase required contributions to retirement	H.R. 2015; S. 947	0.2 to 0.6	No.
Budget Reconciliation: Revenue	Several (tax related)	H.R. 2014; S. 949	9.0 to 16.0	No.
Caribbean Trade	Change deduction for accrued severance pay	H.R. 2644	0.1	No.
China MFN	Increase tariff rates	H.J. Res. 79	Greater than 0.1	No.
Education Savings Act and IRS Restructuring and Reform Act	Change deduction for accrued vacation pay	H.R. 2646; H.R. 2676	0.1 to 1.1	No.
Encryption	Allow decryption	H.R. 695	0.2 to 2.0	Yes.
Financial Services Reform	Restrict investment activity of Federal Home Loan Banks	H.R. 10	Greater than 0.1	Yes.
Nuclear Waste Policy	Shift payment of fees	H.R. 1270; S. 104	Greater than 2.3	No.
Memorandum: Mandates with Uncertain Costs ²				
21st Century Patent System Improvement	Extend surcharge, authorize fee increase	H.R. 400	0.02 to 0.14	No.
Terrorism	Prohibit financial transactions	H.R. 748	n.a.	No.

Worker Paycheck Fairness	Require authorizations and reports	H.R. 1625	n.a.	No.
Nuclear Regulatory Commission	Extend authority to collect fees	H.R. 2015	0 to 0.3	No.
Children's Protection from Violent Programming	Blockable programming, FCC regulations	S. 363	n.a.	No.
Notes.—The mandates in this table are those identified by the Congressional Budget Office when a bill was reported by an authorizing or conference committee. In many cases, more than one formal CBO statement was issued for each mandate topic.				
¹ Cumulative costs over five years for universal service.				
² Under S. 389, if CBO determined that an estimate of mandate costs could not be made, the point of order under section 425(a)(1) of the Unfunded Mandates Reform Act would apply.				
n.a.=not applicable; MFN=most favored nation; IRS=Internal Revenue Service; FCC=Federal Communications Commission.				
Source: Congressional Budget Office.				

VIII. MINORITY VIEWS OF SENATOR LEVIN

I voted against S. 389, the Mandates Information Act, because I think it goes too far, sets up false expectations, and sends the wrong message.

The Unfunded Mandates Act which we passed in 1995 established two points of order—one, if the report on a bill or joint resolution reported by a committee does not include a statement of the Director of CBO on the direct costs of Federal mandates (including both intergovernmental and private sector mandates); and two, if any bill or joint resolution, amendment or motion would increase the direct costs of intergovernmental mandates by more than \$50 million with no provision for the federal government to pay those costs. It also requires the CBO to estimate the direct costs of a proposed bill or joint resolution on the private sector.

S. 389 would add the requirement that CBO also estimate the indirect costs of a proposed bill or joint resolution on the private sector and it would add two more points of order. First, it would add a point of order to a bill, joint resolution, amendment or motion that would increase the direct costs of a private sector mandate by more than \$100 million unless the bill provides money for the increased costs. Second, the law currently allows CBO to state if it is not feasible to make a reasonable estimate of the direct costs of a private sector or intergovernmental mandate. S. 389 would make a bill or joint resolution where CBO could not reasonably estimate the direct cost also subject to a point of order.

That means, that if CBO can't reasonably estimate the cost of a piece of legislation, consideration of that legislation is out of order.

If we look at the way we often write laws, the problems with S. 389 become apparent. Take a statute licensing of deep ocean mining. It requires that each license for such mining contain terms and restrictions established by the agency "to assure protection of the environment." It goes on to say, "The administrator shall require * * * the use of the best available technologies for the protection of safety, health, and the environment. * * *" How is CBO going to be able to reasonably estimate the private sector costs of legislation like that when no one could know at that time what will be required of a licensee; and no one could know what the best available technology will be?

Look at the legislation we passed licensing clinical laboratories. We said nobody can "solicit or accept materials derived from the human body for laboratory examination or other procedure unless there is in effect for the laboratory a certificate issued by the Secretary (of HHS) that"—and then the bill lists a whole number of things that the certificate must require, including accreditation, agreement on inspections, certain ways of operating.

It would be impossible for CBO to guess what HHS is going to require of clinical laboratories based on that legislation at the time

it is passed. HHS couldn't even know at that time. Yet, S. 389 would make that legislation out of order because CBO is unable to reasonably estimate the costs. I don't think that makes sense.

I'm also very concerned that this legislation ignores the benefits side of the equation. The bill demands CBO to estimate the costs of federal mandates, but it doesn't require a statement or estimate by CBO of the benefits. We regulate, hopefully, for a purpose—and a beneficial one. To evaluate the reasonableness of the costs, we need to understand the quantity and quality of the intended benefits. This legislation leaves out that important part of the equation.

Finally, the legislation sends the wrong message. It says legislation our committees believe to be necessary and important are out of order if they don't provide for the payment out of taxpayer funds for costs to be imposed on the private sector. Many times those costs are incurred because the private sector is committing a harmful act. Take a statute that seeks to reduce pollution—pollution from a factory or a mine. This bill creates the presumption that the taxpayer should pay to have the individual or company stop polluting. I don't think the American public thinks that's fair or appropriate. Or look at clinical laboratories. If we require by law clinical laboratories to follow certain basic procedures to guarantee the accuracy of their laboratory tests, this bill suggests that the taxpayer should pay the laboratory to comply with those procedures. I don't agree.

Estimating costs of legislation which is under consideration, where that is feasible and reasonable, makes sense. I also think it makes sense to require that we estimate the benefits of our legislation. It doesn't make sense to make good, meaningful, needed legislation “out of order” just because such legislation imposes a certain level of cost or because it CBO can't estimate the cost.

CARL LEVIN.

IX. MINORITY VIEWS OF SENATORS DURBIN AND AKAKA

We agree that it is important for Congress to think carefully about the mandates we impose, not only ones that will impact State and local governments but also those that could affect the private sector, both businesses and individuals. However, we have several reservations about the ramifications of the Mandates Information Act, as amended by the Committee, which prevent us from supporting it.

The stated intent of S. 389 is to make Congress more conscientious about cost burdens we seek to place on the private sector. We do not believe that a point of order during Floor debate is necessary to force such an evaluation of costs. The Congressional Budget Office (CBO) is already required by law to identify private sector mandates. As we consider legislation in Committee, we have an opportunity to gain insights and input from experts on the effects of a proposal, allowing us to weigh the pros and cons of a measure and make judgments about whether the benefits to society outweigh the burdens it would impose.

This bill would make Congressional consideration of certain private sector mandates out of order strictly based on the question of whether direct costs exceed \$100 million.

We fear that the practical impact of this proposal would be to routinely discourage and effectively preclude enactment of essential laws designed to ensure human health, public and workplace safety, and environmental protections. The public relies upon Congress to protect public health and safety and the environment by imposing fair and appropriate enforceable duties on the entities responsible for inflicting harm upon public health and safety.

However, by allowing a point of order to be raised against any legislation that would impose costs estimated at \$100 million or more on the private sector, this bill creates an opportunity for opponents to impede new legislation solely on the basis of its likely fiscal burden, without regard for its public benefits—which may far outweigh the cost element. By invoking this procedural impediment, opponents can effectively subvert enactment of important health and safety protections—without ever having to vote directly against such proposals.

By focusing exclusively on estimated costs, the bill establishes an imbalanced appraisal of legislation. Benefits of proposals are not an element of the equation, and would be largely discounted, if not totally ignored. This could make enacting vital legislation designed to protect public health and safety considerably more difficult. Advancement of a bill could be halted simply because its estimated costs meet a statutory threshold, regardless of the potential public benefits, savings, or necessity.

Furthermore, the cost projections may themselves may prove to be flawed or inflated. The CBO is frequently and necessarily forced

to rely on data and input from the very industries likely to be affected by a proposed directive. It is often impossible to forecast how the private sector will actually respond to a new mandate.

In several instances, it has been demonstrated that original estimates far exceeded the actual costs. For example, the Occupational Safety and Health Administration (OSHA) established a new rule in 1978 to protect workers from exposure to cotton dust which can cause serious respiratory problems. At the time, OSHA estimated that the requirement would cost businesses \$700 million per year. But the industry developed new ways to capture cotton dust. Consequently, costs to industry were determined not to be \$700 million—but \$83 million. That’s 88% less than originally anticipated. Similarly, the Environmental Protection Agency promulgated a rule governing the release of benzene from chemical plants. The industry estimated that this rule would cost \$350,000 per plant. However, soon after the rule was established, the industry developed new manufacturing processes that eliminated any need for benzene. As a result, the actual cost per plant turned out not to be the projected \$350,000, but zero.

Obviously, if the estimated costs are inflated or unreliable, legislation could be blocked that, in reality, would not impose the expected fiscal burden on the private sector or actually even exceed the triggering level under the mandates bill.

We also share the concern that even if CBO is able to obtain independent validation of industry-supplied information, its assumptions and estimates would necessarily be based on broad statutes rather than implementing rules. Many statutes are drafted in general terms, and delegate significant authority to regulators to develop specific implementing rules, given their expertise and the importance of maintaining regulatory flexibility. In its February 1998 report assessing the 1997 impact of the Unfunded Mandates Reform Act of 1995, CBO cited “unknowable future regulations” and “missing information” as among the factors that prevent ascertaining whether costs exceed the threshold.

CBO noted that, particularly for private sector mandates, estimates occasionally could not be made at all or made only on crude assumptions because costs would be affected by specific implementing rules developed after the proposed reform was enacted. For instance, as CBO Deputy Director James Blum explained to this Committee in June, because CBO could not determine what technical and functional regulatory requirements would be established for an encryption bill reported in the House, its cost estimate ranged from \$200 million to \$2 billion. Similarly, CBO cited examples of its inability to obtain reliable data in preparing its estimates because information in some circumstances simply does not exist.

In addition, we are concerned about the bill’s requirement that if CBO cannot, despite its best efforts, reasonably estimate the costs of a mandate and explains its inability to derive a figure, a point of order will still lie against the bill to the same extent as if the reporting Committee failed to include the estimate. This would result even under circumstances in which costs cannot be estimated although they may not actually exceed the threshold \$100 million procedural trigger.

The bill requires CBO to specify the reasons why it could not make a reasonable cost estimate, yet those presumably sound and documented explanations would have no bearing on whether a point of order would lie—it would be as automatically available as if CBO did not perform any analysis at all. It is important to consider that in 1997, CBO was unable, due to one or more factors including ambiguous bill language, uncertainty about who is affected, an lack of information, to determine whether direct costs of a particular mandates exceeded the statutory threshold in 12 percent of the 64 intergovernmental mandates identified and 5 percent of the 65 private sector mandates identified.

As noted, S. 389 seeks to provide industry with procedural protections to guard against the establishment of new requirements in the public interest. If enacted, it would likely subject a significant amount of potential legislation that addresses pressing environmental problems to a procedural barricade. At the same time, proposals that seek to remove or weaken existing requirements would not fall within the ambit of such a new private sector mandate point of order or be subject to the same procedural safeguards. For example, repealing the Clean Air Act program which reduces toxic air emissions, or eliminating the Clean Water Act requirements for wastewater treatment plants to treat water prior to discharge into lakes and rivers could occur without open and meaningful consideration and a separate independent vote.

During committee consideration, Senator Durbin offered an amendment to inject some balance into the process and provide the public the same procedural protections as would be available under S. 389 for imposing new costs on the private sector. The Durbin proposal would extend the point of order in the bill to be available against any legislation that would eliminate, prevent the imposition of, prohibit the use of appropriated funds to implement, or make less stringent any Federal private sector mandate established in law or regulation that protects human health, safety, or the environment. It would not prohibit Congress from revising or repealing any environmental, human health, or public safety laws. It would simply ensure a meaningful, focused opportunity to more deliberatively consider provisions that eliminate or roll back existing Federal private sector mandates established in law or regulation that protect human health, safety, or the environment.

For the foregoing reasons, we respectfully oppose the Mandates Information Act as advanced by this Committee. We do not question the intent of the sponsors to provide a more open and deliberative evaluation of the costs of Federal legislation and the impact upon those who will assume such fiscal burdens. However, to the extent that this bill establishes a potentially insurmountable barrier to enacting new or reauthorized requirements that preserve and protect the environment, human health, and public and workplace safety, it is unacceptable.

DICK DURBIN.
DANIEL K. AKAKA.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 389, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no changes are proposed is shown in roman):

CONGRESSIONAL BUDGET AND IMPOUNDMENT
CONTROL ACT OF 1974

* * * * *

TITLE IV—ADDITIONAL PROVISIONS TO
IMPROVE FISCAL PROCEDURES

* * * * *

PART B—FEDERAL MANDATES

SECTION 421. DEFINITIONS.

- (1) * * *
- (2) * * *
- (3) * * *
- (4) * * *

(5) FEDERAL INTERGOVERNMENTAL MANDATE.—The term “Federal intergovernmental mandate” means—

(A) * * *

(B) any provision in legislation, statute or regulation that relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority, if [the provision]—

(i)(I) *the provision* would increase the stringency of conditions of assistance to State, local, or tribal governments under the program; or

(II) *the provision* would place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding to State, local, or tribal governments under the program; and

(ii) *that legislation, statute, or regulation does not provide* the State, local, or tribal governments that participate in the Federal program [lack] new or expanded authority under that program to amend their financial or programmatic responsibilities to continue providing required services that are affected by the legislation, statute, or regulation.

* * * * *

SECTION 424. DUTIES OF THE DIRECTOR; STATEMENTS ON BILLS AND JOINT RESOLUTIONS OTHER THAN APPROPRIATIONS BILLS AND JOINT RESOLUTIONS.

(a) * * *

(b) **FEDERAL PRIVATE SECTOR MANDATES IN REPORTED BILLS AND JOINT RESOLUTIONS.**—For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

(1) * * *

(2) * * *

(3) **ESTIMATE NOT FEASIBLE.**—If the Director determines that it is not feasible to make a reasonable estimate that would be required under paragraphs (1) and (2), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement. *If such a determination is made by the Director, a point of order under this part shall lie only under section 425(a)(1) and as if the requirement of section 425(a)(1) had not been met.*

(4) **ESTIMATE OF INDIRECT IMPACTS.**—

(A) **IN GENERAL.**—*In preparing estimates under paragraph (1), the Director shall also estimate, if feasible, the impact (including any disproportionate impact in particular regions or industries) on consumers, workers, and small businesses, of the Federal private sector mandates in the bill or joint resolution, including—*

(i) an analysis of the effect of the Federal private sector mandates in the bill or joint resolution on consumer prices and on the actual supply of goods and services in consumer markets;

(ii) an analysis of the effect of the Federal private sector mandates in the bill or joint resolution on worker wages, worker benefits, and employment opportunities; and,

(iii) an analysis of the effect of the Federal private sector mandates in the bill or joint resolution on the hiring practices, expansion, and profitability of businesses with 100 or fewer employees.

(B) **ESTIMATE NOT CONSIDERED IN DETERMINATION.**—*The estimate prepared under this paragraph shall not be considered in determining whether the direct costs of all Federal private sector mandates in the bill or joint resolution will exceed the threshold specified in paragraph (1).*

* * * * *

SEC. 425. LEGISLATION SUBJECT TO POINT OF ORDER.

(a) **IN GENERAL.**—It shall not be in order in the Senate or the House of Representatives to consider—

(1) * * *

(2) any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of [Federal intergovernmental mandates by an amount that causes the thresholds specified in section 424(a)(1)] *Federal mandates by*

an amount that causes the thresholds specified in section 424 (a)(1) or (b)(1) to be exceeded, unless—

(A) * * *

(B) * * *

(b) * * *

(c) COMMITTEE ON APPROPRIATIONS.—

(1) APPLICATION.—The provisions of subsection (a)—

(A) * * *

(B) shall apply to—

(i) any legislative provision increasing direct costs of a Federal **[intergovernmental]** mandate contained in any bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

(ii) any legislative provision increasing direct costs of a Federal **[intergovernmental]** mandate contained in any amendment offered to a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

(iii) any legislative provision increasing direct costs of a Federal **[intergovernmental]** mandate in a conference report accompanying a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives; and

(iv) any legislative provision increasing direct costs of a Federal **[intergovernmental]** mandate contained in any amendments in disagreement between the two Houses to any bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives.

(2) * * *

* * * * *

SEC. 427. REQUESTS TO THE CONGRESSIONAL BUDGET OFFICE FROM SENATORS.

At the written request of a Senator, the Director shall, to the extent practicable, prepare an estimate of the direct costs of a Federal **[intergovernmental]** mandate contained in an amendment of such Senator.